

House Study Bill 646

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION
AND LABOR BILL BY
CHAIRPERSON JENKINS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act conferring additional enforcement authority on the real
2 estate commission, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TL5B 5945HC 80
5 rn/sh/8

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1 1 Section 1. Section 543B.34, unnumbered paragraph 1, Code
1 2 2003, is amended to read as follows:
1 3 The real estate commission may upon its own motion and
1 4 shall upon the verified complaint in writing of any person, if
1 5 the complaint together with evidence, documentary or
1 6 otherwise, presented in connection with the complaint makes
1 7 out a prima facie case, request commission staff or any other
1 8 duly authorized representative or designee to investigate the
1 9 actions of any real estate broker, real estate salesperson, or
1 10 other person who assumes to act in either capacity within this
1 11 state, and may suspend or revoke a license issued under this
1 12 chapter at any time if the licensee has by false or fraudulent
1 13 representation obtained a license, or if the licensee or other
1 14 person assuming to act in the capacity of a real estate broker
1 15 or real estate salesperson is found to be guilty of any of the
1 16 following:

1 17 Sec. 2. Section 543B.34, Code 2003, is amended by adding
1 18 the following new unnumbered paragraph:
1 19 NEW UNNUMBERED PARAGRAPH. If an investigation pursuant to
1 20 this section reveals that an unlicensed person has assumed to
1 21 act in the capacity of a real estate broker or real estate
1 22 salesperson, the commission may issue a cease and desist
1 23 order, and may impose a civil penalty of up to the greater of
1 24 ten thousand dollars or ten percent of the real estate sale
1 25 price.

1 26 Sec. 3. NEW SECTION. 543B.49 INJUNCTIVE RELIEF.
1 27 1. In addition to the penalty and complaint provisions of
1 28 sections 543B.43, 543B.44, and 543B.48, an injunction may be
1 29 granted through an action in district court to prohibit a
1 30 person from engaging in an activity which violates the
1 31 provisions of section 543B.1. The action for injunctive
1 32 relief may be brought by an affected person. For the purposes
1 33 of this section, "affected person" means any person directly
1 34 impacted by the actions of a person suspected of violating the
1 35 provisions of section 543B.1, including but not limited to the
2 1 commission created in section 543B.8, a person who has
2 2 utilized the services of a person suspected of violating the
2 3 provisions of section 543B.1, or a private association
2 4 composed primarily of members practicing a profession for
2 5 which licensure is required pursuant to this chapter.
2 6 2. If successful in obtaining injunctive relief, the
2 7 affected person shall be entitled to actual costs and attorney
2 8 fees. For the purposes of this section, "actual costs" means
2 9 those costs other than attorney fees which were actually
2 10 incurred in connection with the action, including but not
2 11 limited to court and witness fees, investigative expenses,
2 12 travel expenses, legal research expenses, and other related
2 13 fees and expenses.

EXPLANATION

2 14 This bill confers additional enforcement authority upon the
2 15 real estate commission.

2 16 The bill provides that if an investigation conducted
2 17 pursuant to Code section 543B.34 reveals that an unlicensed
2 18 person has assumed to act in the capacity of a real estate
2 19 broker or real estate salesperson, the commission may issue a
2 20 cease and desist order, and may impose a civil penalty of up
2 21

2 22 to the greater of \$10,000 or 10 percent of the real estate
2 23 sale price.

2 24 The bill also provides that an injunction may be granted
2 25 through an action in district court to prohibit a person from
2 26 engaging in an activity which violates the provisions of Code
2 27 section 543B.1. That section provides that a person shall
2 28 not, directly or indirectly, with the intention or upon the
2 29 promise of receiving any valuable consideration, offer,
2 30 attempt, agree to perform, or perform any single act as a real
2 31 estate broker whether as a part of a transaction or as an
2 32 entire transaction, or represent oneself as a real estate
2 33 broker, broker associate, or salesperson, without first
2 34 obtaining a license and otherwise complying with the
2 35 requirements of Code chapter 543B. The bill provides that the
3 1 action for injunctive relief may be brought by an affected
3 2 person, which the bill defines to mean any person directly
3 3 impacted by the actions of a person suspected of violating the
3 4 provisions of Code section 543B.1, including but not limited
3 5 to the real estate commission, a person who has utilized the
3 6 services of a person suspected of violating the provisions of
3 7 Code section 543B.1, or a private association composed
3 8 primarily of members practicing a profession for which
3 9 licensure pursuant to Code chapter 543B is required.

3 10 The bill provides that if successful in obtaining
3 11 injunctive relief, the affected person shall be entitled to
3 12 actual costs and attorney fees. The bill defines "actual
3 13 costs" as those costs other than attorney fees which were
3 14 actually incurred in connection with the action, including but
3 15 not limited to court and witness fees, investigative expenses,
3 16 travel expenses, legal research expenses, and other related
3 17 fees and expenses.

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